



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2649

Introduced 2/21/2013, by Rep. Luis Arroyo

SYNOPSIS AS INTRODUCED:

820 ILCS 185/5
820 ILCS 185/25
820 ILCS 185/30
820 ILCS 185/40
820 ILCS 185/55
820 ILCS 185/63 new

Amends the Employee Classification Act. Includes an individual within the scope of the term "contractor". Provides for notice to an employer of violations and penalties and for a time within which an employer may request a hearing; provides for a formal administrative hearing. Makes changes concerning responsibilities of the Attorney General and the recovery of penalties. Includes discipline within acts prohibited as retaliation against a person for exercising rights under the Act, and adds provisions concerning review, an investigation, and a formal hearing. Provides for individual officers and agents of employers to be liable under the Act.

LRB098 07683 JLS 37756 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Employee Classification Act is amended by
5 changing Sections 5, 25, 30, 40, and 55 and by adding Section
6 63 as follows:

7 (820 ILCS 185/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Construction" means any constructing, altering,
10 reconstructing, repairing, rehabilitating, refinishing,
11 refurbishing, remodeling, remediating, renovating, custom
12 fabricating, maintenance, landscaping, improving, wrecking,
13 painting, decorating, demolishing, and adding to or
14 subtracting from any building, structure, highway, roadway,
15 street, bridge, alley, sewer, ditch, sewage disposal plant,
16 water works, parking facility, railroad, excavation or other
17 structure, project, development, real property or improvement,
18 or to do any part thereof, whether or not the performance of
19 the work herein described involves the addition to, or
20 fabrication into, any structure, project, development, real
21 property or improvement herein described of any material or
22 article of merchandise. Construction shall also include moving
23 construction related materials on the job site to or from the

1 job site.

2 "Contractor" means any individual, sole proprietor,
3 partnership, firm, corporation, limited liability company,
4 association or other legal entity permitted by law to do
5 business within the State of Illinois who engages in
6 construction as defined in this Act.

7 "Contractor" includes a general contractor and a
8 subcontractor.

9 "Department" means the Department of Labor.

10 "Director" means the Director of the Department of Labor.

11 "Employer" means any contractor that employs individuals
12 deemed employees under Section 10 of this Act; however,
13 "employer" does not include (i) the State of Illinois or its
14 officers, agencies, or political subdivisions or (ii) the
15 federal government.

16 "Entity" means any contractor for which an individual is
17 performing services and is not classified as an employee under
18 Section 10 of this Act; however, "entity" does not include (i)
19 the State of Illinois or its officers, agencies, or political
20 subdivisions or (ii) the federal government.

21 "Interested party" means a person with an interest in
22 compliance with this Act.

23 "Performing services" means the performance of any
24 constructing, altering, reconstructing, repairing,
25 rehabilitating, refinishing, refurbishing, remodeling,
26 remediating, renovating, custom fabricating, maintenance,

1 landscaping, improving, wrecking, painting, decorating,
2 demolishing, and adding to or subtracting from any building,
3 structure, highway, roadway, street, bridge, alley, sewer,
4 ditch, sewage disposal plant, water works, parking facility,
5 railroad, excavation or other structure, project, development,
6 real property or improvement, or to do any part thereof,
7 whether or not the performance of the work herein described
8 involves the addition to, or fabrication into, any structure,
9 project, development, real property or improvement herein
10 described of any material or article of merchandise.
11 Construction shall also include moving construction related
12 materials on the job site to or from the job site.

13 (Source: P.A. 95-26, eff. 1-1-08.)

14 (820 ILCS 185/25)

15 Sec. 25. Enforcement.

16 (a) Any interested party may file a complaint with the
17 Department against an entity or employer covered under this Act
18 if there is a reasonable belief that the entity or employer is
19 in violation of this Act. It shall be the duty of the
20 Department to enforce the provisions of this Act. The
21 Department shall have the power to conduct investigations in
22 connection with the administration and enforcement of this Act
23 and any investigator with the Department shall be authorized to
24 visit and inspect, at all reasonable times, any places covered
25 by this Act and shall be authorized to inspect, at all

1 reasonable times, documents related to the determination of
2 whether an individual is an employee under Section 10 of this
3 Act. The Director of Labor or his or her representative may
4 compel, by subpoena, the attendance and testimony of witnesses
5 and the production of books, payrolls, records, papers, and
6 other evidence in any investigation and may administer oaths to
7 witnesses.

8 (b) Whenever the Department believes upon investigation
9 that there has been a violation of any of the provisions of
10 this Act or any rules or regulations promulgated under this
11 Act, the Department may: (i) issue and cause to be served on
12 any party an order to cease and desist from further violation
13 of the Act, (ii) take affirmative or other action as deemed
14 reasonable to eliminate the effect of the violation, (iii)
15 collect the amount of any wages, salary, employment benefits,
16 or other compensation denied or lost to the individual, and
17 (iv) assess any civil penalty allowed by this Act. ~~The civil
18 penalties assessed by the Department as well as any other
19 relief requested by the Department shall be recoverable in an
20 action brought in the name of the people of the State of
21 Illinois by the Attorney General.~~

22 (c) Upon the determination by the Department of any
23 violation and the determination by the Department of a civil
24 penalty under this Section, the Department shall notify the
25 employer in writing of the alleged violation and the amount of
26 the penalty. The Department shall afford the employer 10

1 calendar days from the date of the notice to request a hearing.
2 Absent the employer requesting a hearing within the requisite
3 time period provided herein, the Department's determination
4 shall be final. Any final determination by the Department shall
5 be enforceable in an action brought by the Attorney General in
6 the name of the people of the State of Illinois under the
7 Administrative Review Law.

8 (d) Upon timely written request of the employer or entity,
9 the Department shall schedule a formal administrative hearing
10 within 45 days in compliance with Article 10 of the Illinois
11 Administrative Procedure Act and the Department shall have the
12 authority to adopt reasonable rules for the hearing process.
13 The General Assembly finds that the adoption of rules to
14 implement this Section is deemed an emergency and necessary for
15 the public interest and welfare. The final decision of an
16 Administrative Law Judge shall be rendered within 30 calendar
17 days after the close of the hearing. The final decision of an
18 Administrative Law Judge rendered after the close of a hearing
19 under this Section is subject to the provisions of the
20 Administrative Review Law.

21 (Source: P.A. 95-26, eff. 1-1-08.)

22 (820 ILCS 185/30)

23 Sec. 30. Attorney General; State's Attorneys. Criminal
24 violations of this Act shall be prosecuted by the Attorney
25 General or the appropriate State's Attorney. The Department

1 shall refer matters to the Attorney General and the appropriate
2 State's Attorney upon determining that a criminal violation may
3 have occurred. ~~In all other proceedings the Department shall be~~
4 ~~represented by the Attorney General's Office.~~

5 (Source: P.A. 95-26, eff. 1-1-08.)

6 (820 ILCS 185/40)

7 Sec. 40. Penalties. An employer or entity that violates any
8 of the provisions of this Act or any rule adopted under this
9 Act shall be subject to a civil penalty not to exceed \$1,500
10 for each violation found in the first audit by the Department.
11 Following a first audit, an employer or entity shall be subject
12 to a civil penalty not to exceed \$2,500 for each repeat
13 violation found by the Department within a 5 year period. For
14 purposes of this Section, each violation of this Act for each
15 person and for each day the violation continues shall
16 constitute a separate and distinct violation. In determining
17 the amount of a penalty, the Director shall consider the
18 appropriateness of the penalty to the employer or entity
19 charged, upon the determination of the gravity of the
20 violations. ~~The amount of the penalty, when finally determined,~~
21 ~~may be recovered in a civil action filed in any circuit court~~
22 ~~by the Director of Labor, or a person aggrieved by a violation~~
23 ~~of this Act or any rule adopted under this Act.~~ In any civil
24 action brought by an interested party pursuant to this Section,
25 the circuit court shall award the interested party 10% of the

1 amount recovered. Upon receipt of any civil penalties by the
2 Department, 10% of such moneys shall be distributed and paid to
3 all affected employees.

4 All moneys collected by the Department excluding the 10%
5 amount paid to affected employees shall be submitted to the
6 Director of Labor. ~~In such case, the remaining amount recovered~~
7 ~~shall be submitted to the Director of Labor.~~ Any uncollected
8 amount shall be subject to the provisions of the Illinois State
9 Collection Act of 1986.

10 (Source: P.A. 95-26, eff. 1-1-08.)

11 (820 ILCS 185/55)

12 Sec. 55. Retaliation.

13 (a) It is a violation of this Act for an employer or
14 entity, or any agent of an employer or entity, to retaliate
15 through discharge, discipline, or in any other manner against
16 any person for exercising any rights granted under this Act.
17 Such retaliation shall subject an employer or entity to civil
18 penalties pursuant to this Act or a private cause of action, or
19 both.

20 (b) It is a violation of this Act for an employer or entity
21 to retaliate against a person for:

22 (1) making a complaint to an employer or entity, to a
23 co-worker, to a community organization, before a public
24 hearing, or to a State or federal agency that rights
25 guaranteed under this Act have been violated;

1 (2) causing to be instituted any proceeding under or
2 related to this Act; or

3 (3) testifying or preparing to testify in an
4 investigation or proceeding under this Act.

5 (c) Any employee or a representative of employees who
6 believes that he has been discharged, disciplined, or otherwise
7 retaliated against by any person in violation of this Act, may,
8 within 30 calendar days of the alleged violation, apply to the
9 Department for a review of the discharge, discipline, or
10 related retaliation. A copy of the complaint shall be sent to
11 the person alleged to have committed the retaliation.

12 (d) Upon receipt of the allegation the Department shall
13 cause an investigation to be made. In the event the Department
14 finds cause to believe a violation has occurred, the Department
15 may institute a formal hearing before an Administrative Law
16 Judge. Upon the close of the hearing the Administrative Law
17 Judge shall issue a formal decision, which may include such
18 relief as is necessary to abate the violation including, but
19 not limited to, the rehiring or reinstatement of the employee
20 or representative of the employee and compensating the employee
21 in an amount to make the employee whole. A final decision by
22 the Administrative Law Judge shall be issued within 30 calendar
23 days after the close of a hearing and is subject to the
24 provisions of the Administrative Review Law.

25 (Source: P.A. 95-26, eff. 1-1-08.)

1 (820 ILCS 185/63 new)

2 Sec. 63. Individual liability. In addition to an individual
3 who is deemed to be an employer pursuant to Section 5 of this
4 Act, any officer of a corporation or agent of an employer who
5 knowingly permits such employer to violate the provisions of
6 this Act shall be deemed to be the employers of the employees
7 of the corporation and individually liable for all violations
8 and penalties assessed by the Department.